



## Ohio federal court decides that Ohio would apply “at the well” rule in oil and gas royalty dispute

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On October 25, 2017, the federal district court for the Northern District of Ohio [issued an opinion](#) in Lutz v. Chesapeake Appalachia, LLC, granting Chesapeake’s renewed partial motion for summary judgment concerning Lutz’s allegation of underpayment of royalties on a producing well. The leases at issue contained the following language: “The royalties to be paid by Lessee are: ...on gas,... produced from said land and sold or used off the premises...the market value at the well of one-eighth of the gas so sold or used, provided that on gas sold at the wells the royalty shall be one-eighth of the amount realized from such sale.” After a lengthy procedural history, the district court certified the question to the Ohio Supreme Court of whether Ohio follows the “at the well” rule or the “marketable product” rule in relation to royalty payments. The “at the well” rule states that post-production costs of gas are to be shared proportionately by the working interest and royalty owners. On the other hand, the “marketable product” rule states that all post-production costs must be borne solely by the operator.

After hearing this case in 2016, the Supreme Court of Ohio [declined](#) to answer the question, holding that “[u]nder Ohio law, an oil and gas lease is a contract that is subject to the traditional rules of contract construction. Because the rights and remedies of the parties are controlled by the specific language of their lease agreement, we decline to answer the certified question.” Following this conclusion, the district court held that the Ohio Supreme Court – under traditional contract construction principles – would apply the “at the well” rule to the leases at issue and would reject application of the “marketable product” rule. This case will likely affect how working interests and royalty interest holders structure future oil and gas leases.



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